

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DARRELL L. MARKHAM,)	
)	
Petitioner,)	
)	
v.)	No. 4:14-CV-1476-DDN
)	
MICHAEL S. BOWERSOX,)	
)	
Respondent.)	

MEMORANDUM AND ORDER OF TRANSFER

This matter is before the court on Darrell Markham's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Doc. #1]. In addition, petitioner has filed a motion for leave to commence this action without payment of the required filing fee. *See* 28 U.S.C. § 1915(a). Upon consideration of petitioner's financial information, the Court finds that he is financially unable to pay the filing fee. Therefore, the Court will grant petitioner leave to proceed in forma pauperis.

On June 30, 1995, a jury in the Circuit Court of Dent County, Missouri, found petitioner guilty of first degree murder and armed criminal action. He was sentenced on August 29, 1995, as a prior offender to life imprisonment without the possibility of parole for the murder, and to a concurrent term of twenty years imprisonment for the armed criminal action. On March 16, 1998, the Missouri Court of Appeals affirmed the convictions and sentences and, following a hearing,

denied petitioner's motion for post-conviction relief.

The court's records show that movant previously brought a motion for relief under 28 U.S.C. § 2254, which this court denied on the merits on May 16, 2002. *See Markham v. Kemna*, No. 4:99-CV-768-DDN (E.D.Mo). On appeal, the United States Court of Appeals for the Eighth Circuit denied petitioner a certificate of appealability and dismissed the case; the mandate issued on October 16, 2002.

Title 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." There is no indication that the Court of Appeals has certified the instant habeas application as required by § 2244(b)(3)(A). As such, this Court lacks authority to grant petitioner the relief he seeks. Rather than dismiss this action, the Court will transfer the petition to the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997); *Coleman v. United States*, 106 F.3d 339 (10th Cir. 1997); *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996).

Therefore,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that no order to show cause shall issue as to respondent, because the instant petition is successive under 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that petitioner's application for a writ of habeas corpus is **DENIED**, without prejudice.

IT IS FURTHER ORDERED that the Clerk shall **TRANSFER** the instant petition to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631.

Dated this 9th day of September, 2014.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE